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CHESWOLD INVESTMENTS
(GRAPES), LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CHESWOLD INVESTMENTS
(GRAPES), LLC, a Delaware limited
liability company;

Plaintiff,

v.

GRAPERY, INC., a California
corporation,

Defendant.

Case No. 2:18-cv-8490

COMPLAINT FOR:

- 1) BREACH OF WRITTEN CONTRACT**
- 2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
- 3) UNJUST ENRICHMENT**
- 4) CONVERSION**
- 5) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 (UNFAIR COMPETITION)**

JURY TRIAL DEMANDED

1 Plaintiff Cheswold Investments (Grapes), LLC (“Cheswold” or “Plaintiff”),
2 by and through its counsel, alleges as follows:

3 **PARTIES**

4 1. Plaintiff Cheswold is a Delaware limited liability company with its
5 principal place of business in Pennsylvania. The members of Cheswold are Next
6 Egg Investments (JN), LP, a Delaware limited partnership with its principal place
7 of business in Delaware, and Next Egg Investments (Cheswold), LP, also a
8 Delaware limited partnership with its principal place of business in Delaware.
9 None of the partners of either Next Egg Investments (JN), LP, or Next Egg
10 Investments (Cheswold), LP, and thus none of the members of Cheswold, is a
11 citizen of California. Cheswold owns table grape farmland near Bakersfield,
12 California, on which it grows and harvests specialty table grapes.

13 2. Defendant Grapery, Inc. (“Grapery” or “Defendant”) is a California
14 corporation, headquartered and with its principal place of business in California.
15 Grapery provides farm management, sales, marketing and consulting services for
16 specialty table grape growers, and grows and sells specialty table grapes for its
17 own account.

18 **JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over the subject matter of this dispute
20 pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds
21 \$75,000, exclusive of interest and costs, and the parties are citizens of different
22 states.

23 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)
24 because Defendant is deemed a resident of this District under 28 U.S.C.
25 §§ 1391(c)(2) and 1391(d), and because the parties contractually consented to the
26 exclusive jurisdiction of any California state or federal court in Los Angeles
27 County with respect to any action or proceeding arising out of or relating to the
28 parties’ agreement. This is such a case.

COMMON ALLEGATIONS

5. On January 5, 2011, and as amended on March 10, 2014, Cheswold and Grapery entered into a written contract (the “Management Agreement”), pursuant to which Grapery was engaged to manage the planting, cultivation, growing, sales, and marketing of grapes on certain portions of Cheswold’s aforementioned land.

6. As payment, Grapery was to receive a flat fee for the first two years of development and cultivation, and thereafter a variable fee based on a percentage of Cheswold’s net earnings from the sale of the crop (“EBIT”). With respect to the latter, specifically:

- a. Within sixty business days of the end of each harvest year, Grapery was required to submit to Cheswold an “**Earnings Statement**” setting forth the transactions, operations, and results of the grape operations on Cheswold’s land, as well as other relevant information.
- b. Within forty-five business days of receiving the Earnings Statement from Grapery, Cheswold was to return to Grapery an “**EBIT Statement**” setting forth the EBIT for the harvest year covered by the Earnings Statement. EBIT is defined as the revenues received from the sale of the grapes grown during the harvest year, minus: (i) related non-capitalized expenses, (ii) any royalty fees owed for a particular variety of specialty grape, and (iii) depreciation.
- c. Within thirty business days of Grapery’s receipt of the EBIT Statement (or upon any earlier agreement as to the EBIT amount), Grapery was to be paid 32% of the EBIT for the relevant harvest year.

7. The Management Agreement authorized Grapery to incur certain expenses and enter into agreements necessary for the growing, storage, and selling of Cheswold’s grapes, but subject to Cheswold’s approval of a detailed annual

1 budget and operating plan, as well as Grapery's express contractual duty to use
2 good farming standards prevailing in the area, among other things.

3 8. In 2014, Grapery was unable to provide cold storage services for
4 Cheswold's grapes, so it engaged a third party vendor to do so, at a cost to
5 Cheswold of \$1.01 per box.

6 9. In 2015, Grapery completed construction of its own cold storage
7 facility. Thereafter, Grapery used its own facility for cold storage of Cheswold's
8 grapes instead of engaging a third party cold storage provider.

9 10. Although Cheswold was aware that Grapery had switched to using its
10 own cold storage facility, Cheswold never approved any new cold storage rate for
11 the use of Grapery's facility.

12 ***The 2015 Harvest Year: Grapery Overcharges Cheswold At Least \$549,081***

13 11. On April 15, 2016, Grapery delivered to Cheswold the Earnings
14 Statement for the 2015 harvest year (the "2015 Earnings Statement").

15 12. The 2015 Earnings Statement reflected a cold storage charge of \$1.93
16 per box of grapes for the use of Grapery's cold storage facility.

17 13. \$1.93 per box was unreasonable and greatly in excess of market rates
18 available for cold storage services. According to Grapery's own cold storage
19 analysis for the 2015 harvest year, it charged growers other than Cheswold only
20 \$1.10 per box of grapes for cold storage.

21 14. This overcharge of at least \$0.83 per box resulted in a total overcharge
22 of at least \$549,081 in costs to Cheswold for Grapery's cold storage services for
23 the 2015 harvest year.

24 15. Cheswold was not notified of the \$1.93 per box rate for Grapery's
25 cold storage services until March 30, 2016. At no point did Grapery provide
26 Cheswold with a "schedule of related party transactions, including ... cold storage
27 rates" as required by paragraph 2(a)(xiii) of the Management Agreement. Nor did
28 Grapery provide "information to substantiate reasonable and market rate pricing"

1 as required by paragraph 2(c)(i) of the Management Agreement whenever Grapery
2 proposes to use a storage service in which it or any of its principals have an
3 interest.

4 16. Cheswold never approved the \$1.93 per box cold storage cost that
5 Grapery charged for the 2015 harvest year, nor did Cheswold ever approve an
6 annual budget or operating plan for the 2015 harvest year or any subsequent
7 harvest year that identified a \$1.93 per box cost for cold storage.

8 17. In the 2015 EBIT Statement, Cheswold notified Grapery that a price
9 of \$1.93 per box for cold storage was unfair and improper under the terms of the
10 Management Agreement.

11 18. Grapery advised Cheswold on April 11, 2016 that the \$1.93 per box
12 cost included a “capital charge” of 8% of the cost of constructing Grapery’s cold
13 storage facility.

14 19. At no time did Cheswold agree to pay any such “capital charge,” nor
15 is the unilateral imposition of such a charge a commercially reasonable practice. It
16 also appears that Grapery provided cold storage services to other growers at the
17 \$1.10 per box rate during the 2015 harvest year without any such “capital charge.”

18 20. Cheswold owed Grapery a reconciling payment for the 2015 harvest
19 year based on the calculation of EBIT in the 2015 EBIT Statement.

20 21. Grapery requested a reconciling payment of approximately \$720,000,
21 reflecting its requested cold storage cost of \$1.93 per box.

22 22. Cheswold again notified Grapery that the \$1.93 per box cold storage
23 fee was not approved, and instead paid Grapery a reconciling payment reflecting a
24 cold storage rate of \$1.10 per box, the same rate Grapery had charged other
25 growers for that harvest year.

26 ***The 2016 Harvest Year: Grapery Overcharges Cheswold At Least \$656,972***

27 23. On April 10, 2017, Grapery sent Cheswold the Earnings Statement for
28 the 2016 harvest year (the “2016 Earnings Statement”).

1 24. The 2016 Earnings Statement reflected a cold storage charge of \$1.98
2 per box for cold storage services provided by Grapery.

3 25. This cold storage price of \$1.98 per box Grapery charged was again
4 unreasonable, in excess of market rates, and imposed without Cheswold's
5 approval, authorization, or agreement.

6 26. This overcharge of at least \$0.88 per box, compared to the \$1.10 per
7 box rate that Grapery advised Cheswold would be charged by Grapery to other
8 growers in 2016, resulted in a total overcharge of at least \$656,972 in costs to
9 Cheswold for Grapery's cold storage services for the 2016 harvest year.

10 27. On June 9, 2017, Cheswold sent Grapery the 2016 EBIT Statement.
11 In the 2016 EBIT Statement, Cheswold again notified Grapery that Cheswold did
12 not agree to or approve a cold storage cost of \$1.98 per box for Grapery's cold
13 storage services. Cheswold accordingly adjusted the cold storage cost in the 2016
14 EBIT Statement to \$1.10 per box.

15 28. As a result of adjusting the cold storage costs for the 2016 harvest
16 year to \$1.10 per box, Grapery owed Cheswold a reconciling payment of \$446,741
17 for the 2016 harvest year.

18 29. Cheswold repeatedly requested payment of the \$446,741 that Grapery
19 wrongfully withheld, or justification and substantiation for the \$1.98 per box cold
20 storage rate Grapery charged.

21 30. Grapery refused to turn over Cheswold's money and failed to provide
22 justification or substantiation for a \$1.98 per box cost for its cold storage services.

23 ***The 2017 Harvest Year: Grapery Overcharges Cheswold At Least \$618,591***

24 31. On April 10, 2018, Grapery sent Cheswold the Earnings Statement for
25 the 2017 harvest year (the "2017 Earnings Statement").

26 32. The 2017 Earnings Statement reflected a cold storage charge of \$1.97
27 per box for cold storage services provided by Grapery.
28

1 33. Again, Grapery's cold storage charge of \$1.97 per box was
2 unreasonable, in excess of market rates, and imposed without Cheswold's
3 approval, authorization, or agreement.

4 34. This overcharge of at least \$0.87 per box, compared to the \$1.10 per
5 box rate that Grapery advised Cheswold would be charged by Grapery to other
6 growers in 2017, resulted in a total overcharge of at least \$618,591 in costs to
7 Cheswold for Grapery's cold storage services for the 2017 harvest year.

8 35. On June 7, 2018, Cheswold sent Grapery the 2017 EBIT Statement.
9 In the 2017 EBIT Statement, Cheswold again notified Grapery that Cheswold did
10 not agree to or approve a cold storage cost of \$1.97 per box for Grapery's cold
11 storage services. Cheswold accordingly adjusted the cold storage cost in the 2017
12 EBIT Statement to \$1.10 per box.

13 36. As a result of adjusting the cold storage costs for the 2017 harvest
14 year to \$1.10 per box, Grapery owed Cheswold a reconciling payment of \$420,642
15 for the 2017 harvest year.

16 37. Grapery has refused to turn over Cheswold's money and has failed to
17 provide justification or substantiation for a \$1.97 per box cost for its cold storage
18 services.

19 **FIRST CAUSE OF ACTION FOR BREACH OF WRITTEN CONTRACT**

20 38. Cheswold incorporates and realleges all of the paragraphs above and
21 below as if fully set forth herein.

22 39. Cheswold and Grapery entered into a valid written contract, namely
23 the January 5, 2011 Management Agreement, as amended on March 10, 2014.

24 40. Cheswold performed all or substantially all of its obligations under the
25 Management Agreement, if any, or those obligations have been excused. Any
26 conditions for Grapery's performance were likewise fulfilled or excused.

27 41. Grapery breached the Management Agreement by, among other
28 things, engaging in self-dealing to overcharge Cheswold for cold storage services

1 and/or unilaterally imposing an unauthorized “capital charge” to defray the
2 construction costs of Grapery’s own cold storage facility. In so doing, Grapery
3 violated at least the following terms of the Management Agreement, which are
4 identified here solely by way of example and for ease of reference, without
5 limitation as to other provisions of the Management Agreement that Grapery may
6 have violated:

- 7 a. Paragraph 2(a), which requires Grapery to employ “good farming
8 standards prevailing in the area” in its management of Cheswold’s
9 grape operations;
- 10 b. Paragraph 2(a)(xiii), which (i) requires Grapery to submit for
11 Cheswold’s review and approval an annual operating plan, which
12 specifically must include a “schedule of related party transactions and
13 related costs and expenses, including but not limited to ... cold
14 storage rates,” (ii) prohibits Grapery from proceeding under any new
15 operating plan without Cheswold’s written approval, and (iii)
16 prohibits Grapery from expending additional funds as a result of any
17 potential variances in the annual budget without Cheswold’s prior
18 written consent;
- 19 c. Paragraph 2(c)(i), which requires Grapery to inform Cheswold
20 whenever Grapery proposes or intends to use storage services in
21 which Grapery or any of its principals have an interest, including
22 providing information to substantiate that such storage services would
23 be priced at a reasonable and market rate;
- 24 d. Paragraph 2(d), which requires Grapery to deposit 90% of monthly
25 crop proceeds, less estimated payables, into Cheswold’s account, and
26 to distribute to Cheswold by March 15 of each harvest year any
27 amount withheld in excess of amounts owed to Grapery;
- 28

- 1 e. Paragraph 2(e)(i), which prohibits Grapery from incurring any
2 indebtedness with respect to Cheswold's grape operations, other than
3 trade debt in the ordinary course of business, without Cheswold's
4 prior written consent;
- 5 f. Paragraph 2(e)(ii), which prohibits Grapery from approving an
6 operating plan and related expenses for an operating plan, or making
7 any material changes to an operating plan, without Chesworld's prior
8 written consent;
- 9 g. Paragraph 2(e)(iv), which prohibits Grapery from making any
10 expenditures or series of expenditures that individually or in the
11 aggregate exceed \$10,000 without Cheswold's prior written consent,
12 except in the case of emergency or as expressly included in an
13 approved operating plan;
- 14 h. Paragraphs 4(a) and 4(b), which require that Grapery manage
15 Cheswold's grape operations with at least the same level of care that
16 Grapery employs with respect to its own crops and treat Cheswold's
17 grape crops no differently from any other grape crops owned or sold
18 by or on behalf of Grapery; and
- 19 i. Schedule 1, paragraph B(1), which requires Grapery to make a
20 representative available to discuss an Earnings Statement upon
21 Cheswold's request.

22 42. In addition to Grapery's aforementioned conduct, on information and
23 belief, Cheswold alleges that Grapery has, among other things, overcharged
24 Cheswold for other expenses purportedly incurred in managing the planting,
25 cultivation, sales, and marketing of Cheswold's grapes, and failed to provide
26 information to substantiate the reasonable and market rate for such expenses
27 charged to Cheswold.
28

1 43. As a direct, proximate, and foreseeable result of Grapery's breaches of
2 its contractual undertakings, Cheswold has been damaged, subject to discovery and
3 proof, and in the sum of at least \$867,383.

4 **SECOND CAUSE OF ACTION FOR BREACH OF THE**
5 **IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

6 44. Cheswold incorporates and realleges all of the paragraphs above and
7 below as if fully set forth herein.

8 45. Cheswold and Grapery entered into a valid written contract, namely
9 the January 5, 2011 Management Agreement, as amended on March 10, 2014.

10 46. Cheswold performed all or substantially all of its obligations under the
11 Management Agreement, if any, or those obligations have been excused. Any
12 conditions for Grapery's performance were likewise fulfilled or excused.

13 47. By, among other things, engaging in self-dealing to overcharge
14 Cheswold for cold storage services and/or unilaterally imposing an unauthorized
15 "capital charge" to defray the construction costs of Grapery's own cold storage
16 facility, Grapery unfairly deprived Cheswold of its right to receive the full benefits
17 of its contract, namely close to a million dollars in profits from the sale of
18 Cheswold's grapes, and thereby breached the covenant of good faith and fair
19 dealing implied by law in the Management Agreement.

20 48. As a direct, proximate, and foreseeable result of Grapery's breaches of
21 the implied covenant of good faith and fair dealing, Cheswold has been damaged,
22 subject to discovery and proof, and in the sum of at least \$867,383.

23 **THIRD CAUSE OF ACTION FOR UNJUST ENRICHMENT**

24 49. Cheswold incorporates and realleges all of the paragraphs above and
25 below as if fully set forth herein.

26 50. By, among other things, engaging in self-dealing to overcharge
27 Cheswold for cold storage services and/or unilaterally imposing an unauthorized
28 "capital charge" to defray the construction costs of Grapery's own cold storage

1 facility, Grapery has received the benefit of close to a million dollars to which it is
2 not entitled, as well as the benefit of having its own cold storage facility.

3 51. Grapery has retained those funds unjustly and at Cheswold's expense.

4 52. As a direct, proximate, and foreseeable result of Grapery's unjust
5 enrichment, Cheswold has been damaged, subject to discovery and proof, and in
6 the sum of at least \$867,383.

7 **FOURTH CAUSE OF ACTION FOR CONVERSION**

8 53. Cheswold incorporates and realleges all of the paragraphs above and
9 below as if fully set forth herein.

10 54. Cheswold has a right to possess the proceeds of the sale of its grapes,
11 which Grapery received on Cheswold's behalf.

12 55. Grapery, among other things, intentionally and substantially interfered
13 with Cheswold's right to receive the proceeds of the sale of its grapes by refusing
14 to deliver them to Cheswold upon Chelswold's demand, and further, by using
15 those proceeds to defray the construction costs of Grapery's own cold storage
16 facility, without Cheswold's consent.

17 56. As a direct, proximate, and foreseeable result of Grapery's actions,
18 Cheswold has been damaged, subject to discovery and proof, and in the sum of at
19 least \$867,383, the amount of money belonging to Cheswold that Grapery has
20 wrongfully withheld and refuses to deliver to Cheswold.

21 **FIFTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA**
22 **BUSINESS & PROFESSIONS CODE § 17200 (UNFAIR COMPETITION)**

23 57. Cheswold incorporates and realleges all of the paragraphs above and
24 below as if fully set forth herein.

25 58. By, among other things, engaging in self-dealing to overcharge
26 Cheswold for cold storage services and/or unilaterally imposing an unauthorized
27 "capital charge" to defray the construction costs of Grapery's own cold storage
28

1 facility, and by refusing to return the excess amounts charged, Grapery has
2 engaged in an unlawful, unfair, or fraudulent business act or practice.

3 59. As a direct, proximate, and foreseeable result of Grapery's violations
4 of California's unfair competition laws, Cheswold has been damaged, subject to
5 discovery and proof, and in the sum of at least \$867,383.

6 **REQUEST FOR RELIEF**

7 WHEREFORE, Plaintiff Cheswold prays for relief as follows:

- 8 1. For compensatory and/or incidental damages including, but not
9 limited to, the amount owed in accordance with the terms of the Management
10 Agreement, and other incidental costs and expenses in excess of the jurisdictional
11 minimum amount of this Court and according to proof;
- 12 2. For compensatory and/or incidental damages including, but not
13 limited to, an amount equivalent to the benefit conferred on and unjustly retained
14 by Grapery as a result of its overcharging Cheswold and/or unilaterally imposing
15 an unauthorized "capital charge";
- 16 3. For an order requiring Grapery to turn over to Cheswold the proceeds
17 from the sale of Cheswold's grapes that Grapery has wrongfully withheld;
- 18 4. For reasonable attorneys' fees;
- 19 5. For interest at the legal rate;
- 20 6. For the costs of suit incurred; and
- 21 7. Such other, further or different relief as this Court may deem just and
22 proper.

23
24 Dated: October 2, 2018

HOLLAND & KNIGHT LLP

25
26 By: /s/ Thomas J. Yoo

Thomas J. Yoo

John P. Sullivan

27 Attorneys for Plaintiff

28 CHESWOLD INVESTMENTS (GRAPES),
LLC